

REMARKS/ARGUMENTS

Claim Rejections Under 35 U.S.C. §102

In Paragraph 3 of the Office Action, Examiner rejects claims 1, 17, and 20-22 in the present application (hereinafter the '141 application) under 35 U.S.C. §102(e) as being anticipated by provisional application 60/475,441 (hereinafter the '441 application). Examiner correctly states that the '141 application was filed June 3, 2004 and claims the benefit of the '441 application, filed June 3, 2003. Examiner also states that the '441 application is significantly different from the '141 application, and asserts that the disclosure of the '441 application anticipates or makes obvious the claimed invention of the '141 application obvious. Applicant respectfully disagrees because the '441 application is not a valid reference under §102(e).

Applicant asserts that the '441 application is not a valid reference under 35 U.S.C §102(e). 35 U.S.C §102(e) states:

A person shall be entitled to a patent unless...

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language

In order to apply a reference under 35 U.S.C. §102(e), the reference must be (1) by another and (2) published to be a valid reference under the statute. The '441 application was never published. In addition, the '441 application is not "by another." To be "by another," the inventive entity of the application must be different than that of the reference. See MPEP 706.02(f). The inventive entity of the '441 application is the same as that of the '141 application. Applicant respectfully requests that the rejection of claims 1, 17 and 20-22 under 35 U.S.C. §102(e) be withdrawn and the claims formally allowed at this time.

Allowable Subject Matter

Examiner has indicated that claims 6-10 and 19 are objected to for being dependent on a rejected base claim, but would be allowable if rewritten in dependent form. Applicant thanks Examiner for indicating the allowability of these claims.

Conclusion

Applicant has addressed each and every objection and ground for rejection. The amended claims are patentable over the cited art and Applicant requests that the application be allowed. In the event the Examiner has any questions or there are any issues with respect to the application, the Examiner is invited to call the undersigned at the telephone number below prior to the issuance of any written action.

Respectfully submitted,
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